



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Agriculture

- ☒ Preproposal Statement of Inquiry was filed as WSR 07-10-081 ; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) chapter 16-160 WAC, Registration of Materials for Organic Food Production

Hearing location(s): Room 259
Natural Resources Building - 2nd Floor
1111 Washington St SE
Olympia, WA 98504-2560

Submit written comments to:

Name: Teresa Norman
Address: PO Box 42560
Olympia, WA 98504-2560
e-mail WSDARulesComments@agr.wa.gov
fax (360) 902-2092 by (date) 5:00 pm July 26, 2007

Date: July 26, 2007 Time: 1 - 3 pm

Assistance for persons with disabilities: Contact

Julie Carlson by July 19, 2007

TTY (360) 902-1996 or (360) 902-1880

Date of intended adoption: _____
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The WSDA Organic Food Program is proposing changes to chapter 16-160 WAC, Registration of Brand Name Materials for Organic Food Production. The program is proposing to establish some new fees and increase material registration fees. The new fees and fee increases are needed to recover the cost of providing these services and to provide adequate funding for the WSDA Organic Food Program. The program is also proposing to change the logo that registered materials may use upon approval of their product. This change is needed to ensure that we maintain compliance with accreditation requirements. The proposal would increase renewal fees, new application fees and late fees. It will also establish new fees for reviewing materials in compliance with foreign organic standards and an expedite fee for new applicants that request and expedited review of their application. Foreign standard review fees are set at \$100.00 per product; expedited fees will be billed at a rate of \$40.00 per hour.

The Brand Name Registration Program has grown significantly since 2003 when 323 products were registered with the program, to 2007 with a current number of 582 products. The program has grown 33% from 2006 to 2007, from 437 products to 582 products. RCW 15.86.070(1) requires that the rule include a fee schedule that will provide for the recovery of the full cost of the program. This increase in fees will allow for additional staff required to maintain the program.

Statutory authority for adoption: Chapters 15.86 and 34.05 RCW

Statute being implemented: Chapter 15.86 RCW

Is rule necessary because of a:

- Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION: _____

DATE

NAME (type or print)
Bob Gore

SIGNATURE

TITLE
Deputy Director**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
JUN 18 2007	
TIME	10:30
WSR	07-13-065
AM	PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) WSDA Organic Food Program

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Miles McEvoy	Olympia	(360) 902-1924
Implementation..... Miles McEvoy	Olympia	(360) 902-1924
Enforcement..... Miles McEvoy	Olympia	(360) 902-1924

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Miles McEvoy

Address: WSDA

PO Box 42560

Olympia, WA 98504-2560

phone (360) 902-1924

fax (360) 902-2087

e-mail mmcevoy@agr.wa.gov

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: WSDA is not a listed agency under RCW 34.05.328(5)(a)(i). RCW 34.05.328 regulates "significant legislative rules" and RCW 34.05.328(5)(a)(i) lists the specific state agencies that are considered "significant legislative rule agencies." WSDA is not listed; therefore, we do not consider ourselves to be a "significant legislative rule agency." In addition, Section 309 (for the Department of Agriculture) of Chapter 372, Laws of 2006 provide that: (2) Fees and assessments approved by the department in the 2005-2007 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-030 Do I need to register my brand name material with the organic food program? ~~((Every material which is manufactured within this state and/or distributed within this state for use))~~ Materials used in organic food production, processing or handling may ~~((be registered))~~ submit an application for registration with the department. Registration is not required, but is necessary for a product to appear on the brand name materials list or to label or advertise itself as approved for use in organic food production, processing or handling.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-035 Brand name materials list. The department maintains a list of registered materials that are approved for use in organic food production, processing or handling. The list is provided to all producers, processors and handlers of organic food ~~((who apply for certification with the department))~~. Operations certified by any agency other than the department should refer to their certification agency prior to the use of any registered material as other certification agencies may not recognize the department brand name materials list. A registered material that appears on the brand name materials list has been reviewed by the department to verify that all of its ingredients comply with organic standards under WAC 16-160-060.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-040 How do I apply for registration? Applications for brand name material registration must be made on a form designated by the department. Applications, must be accompanied by the appropriate fee, and must be postmarked by October 31 of each year. ~~((Applications made after the set deadline may be processed as the department can review the application.))~~ Applications received after October 31 may appear on the annual brand name

materials list if received in time to complete the registration prior to the publication of the list. The application form shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;

(2) The name of the material;

(3) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;

(4) The complete formula of the material including the active and inert ingredients;

(5) A description of the manufacturing process including all materials used for the extraction and synthesis of the material, if appropriate;

(6) The intended uses of the product;

(7) The source or supplier of all ingredients; and

(8) Any additional information deemed necessary.

Changes to the information above must be submitted to the department for review.

The director may require a full description of the tests made and the results thereof upon which the claims are based. The director may require production records that demonstrate adequate input materials to reconcile the registrant's production of the final product. Trade secrets are confidential and exempt from public disclosure under the Uniform Trade Secrets Act, chapter 19.108 RCW (~~(. RCW 42.17.260(1))~~) and RCW 42.56.070(1). Applicants should mark the information in the application they consider to be confidential under the Trade Secrets Act or other law. The department will treat this information in accordance with chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-060 What criteria are used to determine if a brand name material is approved? (1) United States Department of Agriculture (USDA) National Organic Program.

The director reviews the information provided under WAC 16-160-040. A brand name material that meets the requirements under the ((2001)) National Organic Program final rule, section 205.105 and sections 205.600 through 205.606 will be registered.

(2) Foreign or additional organic standards.

The director may review materials approved under the USDA National Organic Program for compliance with foreign or additional organic standards. The director reviews the information provided under WAC 16-160-040. A brand name material that complies with a specific foreign or additional organic standard may be registered

as approved under that specific organic standard.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-070 Application fees. ~~((Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.))~~ (1) New product registration.

The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((three))~~ five hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure ~~((7))~~ or crop production aid ~~((7, or livestock production aid))~~ is ~~((two))~~ four hundred dollars per material.

(2) Renewal registration.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((two))~~ three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure ~~((7))~~ or crop production aid ~~((7, or livestock production aid))~~ is ~~((one))~~ two hundred dollars per material.

~~((Renewal registrations postmarked after October 31 pay a late fee of thirty dollars.))~~ (3) Late fees:

Renewal applications postmarked after October 31 must include a late fee in addition to the renewal fee.

<u>If your application is postmarked after October 31 but before:</u>	<u>Then the late fee is:</u>
<u>December 1</u>	<u>\$100.00</u>
<u>January 1</u>	<u>\$200.00</u>
<u>February 1</u>	<u>\$300.00</u>

(4) Inspections.

Inspections, if required, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management.

(5) Samples.

Samples, if required for registration, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged, it shall be at forty dollars per hour plus travel costs and mileage which shall

be charged at the rate established by the state office of financial management.

(6) Expedited evaluation fees.

Requests for expedited reviews may be submitted and, if approved, are billed at a rate of \$40.00 per hour.

(7) Foreign or additional standards.

Upon request, the department may assess compliance with foreign or additional organic standards beyond the National Organic Program. Requests for additional assessments of materials approved under the USDA National Organic Program are billed at a rate of \$100.00 per product for each standard.

NEW SECTION

WAC 16-160-080 Inspections. Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials and any other information deemed necessary to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-090 ((Refusing or canceling)) Denial or revocation of a registration. Initial registration.

(1) If it does not appear to the director that the brand name material is such as to warrant the proposed claims for it or if the brand name material and its labeling do not comply with the provisions of this chapter, the director shall notify the registrant of the manner in which the brand name material and its labeling fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make corrections, the director shall deny registration of the material in accordance with chapter 34.05 RCW.

Renewal registration.

(2) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or that false or inaccurate information was provided by the registrant, the director shall cancel the registration of a material in accordance with chapter 34.05 RCW.

Revoking registration.

(3) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or if false or inaccurate information was provided by the registrant, the director shall cancel the registration of such material in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-100 Labeling of registered brand name materials and use of organic logo. A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in WAC 16-160-110 in the labeling of the material. Approved materials may not make claims indicating products are "certified organic" or similar term. Approved generic materials that are not registered under this chapter must not use the statement nor the logo in the labeling of the material. Registration by no means implies the Washington department of agriculture endorses the use of the product.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

WAC 16-160-110 Organic material registration logo.

((STRICKEN GRAPHIC



STRICKEN GRAPHIC))

